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Evidence--Presumptions--Presumption of Suicide--Presumption of Innocence

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2. The decree of the Court could be enforced with convenience, efficiency, and justice.[14]

3. Special remedies provided by the laws of the state or county to which the foreign corporation owes its existence are not involved.[15]

4. There would be no attempt to adjudicate the power given to the foreign corporation by the state to which it owes its existence.[16]

HARRY F. SCHROEDER.

EVIDENCE—PRESUMPTIONS—PRESUMPTION OF SUICIDE—PRESUMPTION OF INNOCENCE.

The force of *dicta* as judicial authority is irregular and uncertain. Sometimes it has almost the binding authority of settled law; again it will be referred to only to be distinguished.[1] The weight given to it is determined in part by the court which issued it, the personal eminence of the Justices in that court, and the force and certainty of the rule to which it relates.

In *People* v. *Miller*[2] the New York Court of Appeals, speaking through its Chief Judge, expressed dissatisfaction with, and an intention to abandon, a rule of the law of evidence, which this same Court, not ten years prior thereto,[3] had found occasion to acknowledge and affirm. While it is true that this expression of disapprobation was unnecessary to the decision, and hence only *dictum,* there are, we think, few students of the law who would not view this case as overruling the former decision. Assuming therefore, if we may, that this is true, it behooves us to examine the rule of law which the Court has seen fit to repudiate.

In *People* v. *Creasy*[4] the defendant was tried for the murder of his fiance; the defense was suicide. The facts were such that only one of two possibilities could have occurred. Either he murdered her or she committed suicide. The jury was instructed as

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[14] *Supra* note 2.
[15] *Supra* note 5.
[16] *Supra* note 7.

[1] 5 Amer. & Eng. Cyc. of Law 661; 15 C. J. 950, §344; Rush v. French, 1 Ariz. 991, 25 Pac. 815 (1874).
[2] 257 N. Y. 54, 177 N. E. 306 (1931).
[3] People v. Creasy, 236 N. Y. 205, 140 N. E. 563 (1923). It will be noted that of the seven judges then sitting, three are on the court which decided People v. Miller, *viz.* Cardozo, Pound and Crane, *JJ.* Since Pound and Crane dissented, and voted to affirm the conviction, only the present chief judge can be construed to have assented to that holding.
[4] *Ibid.*

to the presumption of the defendant's innocence. Defendant's counsel requested the Judge to charge that since the defendant must be presumed to be innocent, and since the only possibility other than murder by the defendant was suicide by the deceased, the jury must begin its consideration of the case with a presumption that the deceased did commit suicide. This the trial Judge refused to do, and this refusal was made one of the grounds for reversal. The Court of Appeals seemed to feel that to deprive the defendant of the presumption of suicide would tend to diminish the force of the presumption of innocence, for if he were innocent, under the facts in the case, she must have committed suicide. The Court, referring to the requested charge, said: [5]

> "To refuse it was equivalent to denying to the defendant the mantle of protection which the law gave him and allowed the jury to commence its deliberations without a presumption in favor of his innocence."

In *People* v. *Miller* [6] the trial Court, following the rule laid down in the *Creasy* case, charged the jury that they must presume that the deceased committed suicide. Neither prosecution nor defence appealed from this ruling, but the Court of Appeals, in affirming the conviction, said: [7]

> "Upon reconsideration of the doctrine of that case, we are unanimously of the opinion that to the extent of its recognition of a presumption of suicide it should now be disapproved. There is indeed a presumption in the absence of exculpatory evidence that death was not caused by the criminal act of the defendant, for this is merely a restatement in another form of the presumption of innocence. There is no presumption that it was caused in any particular way. * * *"

That the holding in the *Creasy* case was based on an immature consideration of elementary rules of evidence becomes evident on closer analysis. Undoubtedly the defendant was entitled to the presumption of innocence.[8] This is the strongest presumption in the law, and cannot be overcome nor its force diminished by other

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[5] *Ibid.* at 223, 140 N. E. at 569.

[6] *Supra* note 2.

[7] *Supra* note 2 at 61; 177 N. E. at 309.

[8] Coffin v. U. S., 156 U. S. 432, 154 Sup. Ct. 394, 39 L. ed. 481 (1894); People v. Roach, 215 N. Y. 592, 109 N. E. 618, Ann. Cas. 1917A 410 (1915); 16 C. J. 534, §1006.

presumptions.[9] There exists also a presumption that one does not commit suicide,[10] but this presumption is confined to civil cases; there is no presumption against suicide in criminal cases.[11] The reason for this is well set forth in *Persons* v. *State:* [12]

> "It is contended that rules of evidence are the same in civil and criminal cases. Such is the general rule but it does not follow because the rule is the same, that presumptions applicable in the one are always applicable in the other, for an antagonistic presumption may exist, and does, in criminal cases, that is, the innocence of the defendant. That presumption of innocence does not allow the presumption of any fact against it. So the presumption that a deceased did not commit suicide cannot be applied in criminal cases against the presumption of innocence."

In this case the facts were quite like those in the *Creasy* case, and the trial Judge charged the jury that "* * * you are to presume that * * * she did not die by her own hand. In all cases of sudden death the presumption of love of life negatives the idea of suicide." [13] This charge constituted reversible error.

This then is the situation. Deceased either committed suicide or was murdered by the defendant. We must presume that the defendant did not murder the deceased. Query, Must we then presume that the deceased committed suicide? At first blush it would appear illogical to hold otherwise, but we must not overlook the

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[9] Dunlop v. U. S. 165 U. S. 486, 17 Sup. Ct. 375, 41 L. ed. 799 (1897); Dalton v. U. S., 154 Fed. 461, 83 C. C. A. 317 (C. C. A. 7th, 1907); People v. Scott, 22 Cal. App. 54, 133 Pac. 496 (1913); State v. Roswell, 153 Mo. App. 338, 133 S. W. 99 (1910); Persons v. State, *infra* note 12. *In re* Eichler, 84 Misc. 667, 146 N. Y. Supp. 846 (1914). *Contra:* 16 C. J. 542, §1033 citing Hemingway v. State, 68 Miss. 371, 8 So. 317 (1890). This case seems to be against the weight of authority and a decision directly opposite to that taken by the Court in the Hemingway case was arrived at in State v. Shelley, 166 Mo. 616, 66 S. W. 430 (1902).

[10] Travelers' Ins. Co. v. McConkey, 127 U. S. 661, 8 Sup. Ct. 1360 (1887); Mallory v. Travelers' Ins. Co., 47 N. Y. 52 (1871); De Van v. Com. Tras. Soc., 92 Hun 256, *aff'd*, 157 N. Y. 690 (1898); Modern Brotherhood of America v. White, 66 Okla. 241, 168 Pac. 794, L. R. A. 1918B, 520 (1917).

[11] Persons v. State, *infra* note 12; People v. Creasy, *supra* note 3 at 223. We have been unable to find any *criminal* case wherein the jury was charged that there existed a presumption against suicide. In State v. Bauerle, 145 Mo. 1, 46 S. W. 609 (1898) the Court said: "While the law presumes the defendant innocent, there is also a strong presumption against suicide; and while this presumption does not overcome the presumption of innocence, the jury, as rational men, are not expected to disregard it." But even here the record does not show that the jury was charged of a presumption against suicide, and it is possible that the Court merely referred to an inference that might be drawn rather than a charge given. See also State v. Krampe, 161 Iowa 48, 140 N. W. 898 (1913) misconstruing State v. Brown, 152 Iowa 427, 132 N. W. 862 (1911).

[12] 90 Tenn. (60 Pickle) 291, 295, 16 S. W. 726, 727 (1891).

[13] *Supra* note 12 at 293, 16 S. W. at 726.

basic difference between a presumption of law and an inference. A presumption of law is an inference that the jury *must* make,[14] viz., they must presume the defendant is innocent, but while so presuming they *may infer* that the deceased committed suicide. But the mere fact that such inference may be made does not of itself entitle the defendant to a charge that they, the jury, must so infer.

The use of a presumption of suicide would also be contrary to the fundamental reason which prompted its introduction into the law of evidence. Human experience has taught us that when certain facts are shown to exist, we may presume the existence of other facts which are known generally to be concomitant with the first facts.[15] The universal knowledge of the love of life has led to the presumption that one does not commit suicide.[16] What facts are within our knowledge which would lead us to presume that a person would commit suicide? There are none, indeed the evidence is all to the contrary, and the only argument for it proceeds from another presumption, that of innocence. If a jury is not permitted to draw inferences from inferences, it should not be ordered to build presumptions on presumptions.

THOMAS M. MCDADE.

INSURANCE—EFFECT OF MISSTATEMENT OF OWNERSHIP ON RIGHTS OF MORTGAGEE UNDER STANDARD MORTGAGEE CLAUSE.

The primary purpose of insurance under a mortgagee clause is to insure the equitable interest of the mortgagee, who, in practically all instances, does not occupy the insured premises. The ownership of the premises may be transferred without his consent. While a mortgagee can take out a separate policy on his interest, insurance companies have prepared mortgagee clauses to protect the interest of the mortgagee. In the recent case of *Goldstein* v. *National Liberty Insurance Company of America, et al.*,[1] the Court of Appeals was confronted with the problem of deciding whether or not a mortgagee under a mortgagee clause would be prevented from recovering for a fire loss, where the ownership of the premises was misrepresented in a policy which provided for its voidance if the interest of the insured were other than unconditional and sole ownership.

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[14] Sun Mut. Ins. Co. v. Ocean Ins. Co., 107 U. S. 485, 1 Sup. Ct. 582, 27 L. ed. 337 (1882); Platt v. Elias, 186 N. Y. 374, 79 N. E. 1 (1906); (1926) 11 CORN. L. Q. 20. For a critical analysis of this definition see Thayer, *Presumption and the Law of Evidence* (1889) 3 HARV. L. REV. 148 *et seq.*; HAYES, CASES ON EVIDENCE (1898) 79.

[15] *Supra* note 14.

[16] *Supra* note 10.

[1] 256 N. Y. 26, 175 N. E. 359 (1931).